

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

TRAESY LYNN HORTON a.k.a.  
TRACY LYNN HORTON

PLAINTIFF

VS.

CIVIL ACTION NO. 5:15-cv-27(DCB)(MTP)

RONNY TAYLOR AND  
ENCANA OIL & GAS (USA) INC.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This cause is before the Court on the following motions filed by the plaintiff Traesy Lynn Horton ("Horton"):

Motion for default judgment (**docket entry 11**) against defendant Ronny Taylor ("Taylor");

Amended (second) motion for default judgment (**docket entry 13**) against defendant Taylor;

Third motion for default judgment (**docket entry 15**) against defendant Taylor;

Application for entry of default (**docket entry 16**) against defendant Taylor;

Motion (**docket entry 17**) to strike defendant Taylor's opposition (docket entry 12) to plaintiff's first motion for default judgment (docket entry 11);

Amended motion (**docket entry 21**) to strike Taylor's opposition (docket entry 12);

Motion (**docket entry 24**) to quash reissued summons;

Amended motion (**docket entry 26**) to quash reissued summons;

Motion (**docket entry 29**) to withdraw motions to quash reissued summons (docket entries 24 and 26); and

Fourth motion for default judgment (**docket entry 30**) against defendant Taylor.

Having carefully considered the motions and the applicable law, the Court finds as follows:

Obtaining a default judgment involves a two-step process. The first step involves the application for an entry of default by the Clerk against a party who fails to "plead or otherwise defend." Fed.R.Civ.P. 55(a). After the entry of default is obtained, the second step requires a motion for default judgment pursuant to Fed.R.Civ.P. 55(b).

A party is not, however, required to plead or otherwise defend until he has been served with process under Fed.R.Civ.P. 4. Process issued for defendant Taylor on April 13, 2015. The Return of Service indicates that it was served April 14, 2015, on Jana Causey, Comptroller and Deputy Chancery Clerk of Amite County, Mississippi, not on defendant Taylor. See defendant Taylor's Response in Opposition to Motion for Default Judgment (docket entry 12). The Court finds that Horton failed to serve defendant Taylor with process. Horton's first three motions for default judgment (docket entries 11, 13 and 15), as well as his application for entry of default (docket entry 16), motion to strike Taylor's response (docket entry 17), and amended motion to strike Taylor's

response (docket entry 21) must therefore be denied (the application for entry of default will be denied without prejudice). Horton's motion (docket entry 29) to withdraw his motions to quash reissued summons will be granted, and the motions to quash (docket entries 24 and 26) will be denied as moot.

This leaves the plaintiff's fourth motion for default judgment (docket entry 30) against defendant Taylor. Because entry of default from the clerk of court under Rule 55(a) is a prerequisite to obtaining a default judgment under rule 55(b), and Horton has not renewed his application for entry of default, the fourth motion for default judgment will be denied without prejudice.

Accordingly,

IT IS HEREBY ORDERED that the plaintiff's motion for default judgment (**docket entry 11**) is DENIED;

FURTHER ORDERED that the plaintiff's amended motion for default judgment (**docket entry 13**) is DENIED;

FURTHER ORDERED that the plaintiff's third motion for default judgment (**docket entry 15**) is DENIED;

FURTHER ORDERED that the plaintiff's application for entry of default (**docket entry 16**) against defendant Taylor is DENIED WITHOUT PREJUDICE;

FURTHER ORDERED that the plaintiff's motion (**docket entry 17**) to strike defendant Taylor's opposition to plaintiff's first motion for default judgment is DENIED;

FURTHER ORDERED that the plaintiff's amended motion (**docket entry 21**) to strike Taylor's opposition to plaintiff's first motion for default judgment is DENIED;

FURTHER ORDERED that the plaintiff's motion (**docket entry 29**) to withdraw his motions to quash is GRANTED;

FURTHER ORDERED that the plaintiff's motion (**docket entry 24**) to quash reissued summons is DENIED AS MOOT;

FURTHER ORDERED that the plaintiff's amended motion (**docket entry 26**) to quash reissued summons is DENIED AS MOOT.

FURTHER ORDERED that the plaintiff's fourth motion for default judgment (**docket entry 30**) against defendant Taylor is DENIED WITHOUT PREJUDICE.

SO ORDERED, this the 23rd day of October, 2015.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE